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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/814,219

04/01/2004

Katalin Coburn

5389

7590 02/09/2007  
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EXAMINER

PRATT, HELEN F

ART UNIT

PAPER NUMBER

1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/09/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/814,219

Applicant(s)

COBURN, KATALIN

Examiner

Helen F. Pratt

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 4-1-04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

Claims 1, 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the limitation "the whole, unblanched" in line 6. There is insufficient antecedent basis for this limitation in the claim. Claim 5 recites the limitation "wherein said specific spices" and on in lines 1-3. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edson (306,727) in view of the prior art (specification page 7, lines 15-22) and Cammarn et al. (5,417,999) and Avera (3,615,590) and Stockton (1,395,934).

Edson discloses a process of making a peanut paste by roasting peanuts and grinding the peanuts (col. 1, lines 10-40). No mention is seen of blanching the nuts. Claim 1 differs from the reference in the use of unblanched peanuts (for the sake of argument) and in roasting to a particular temperature and in the step of grinding to a coarse paste with a particular particle size. Applicant's specification on page 7, lines 15-21) discloses that it is known to make natural peanut butters without adding

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hydrogenated fats or emulsifiers. Cammarn et al. disclose that it is known to make peanut butter using unblanched white skinned peanuts (abstract) and to roast to 420 F for 4.4 minutes (col. 4, lines 60-70). Avera discloses that roasting develops flavors (col. 2, lines 45-49). Stockton discloses that the degree of oil separation can be prevented partially by coarse grinding, that the finer the grinding the more pronounced the tendency to gravitational separation (page 1, lines 89-103). Therefore, it would have been obvious to one of ordinary skill in the art to use unblanched peanuts as disclosed by Cammarn et al and to roast to a particular temperature to develop the flavor of the nuts, and to grind to a coarse grind as shown by Stockton in the process of Edson.

Claim 2 further requires a particular dark color. However, as above it is known to roast to develop flavors, and it would have been within the skill of the ordinary worker to roast to a particular color. Therefore, it would have been obvious to roast to particular colors.

Claims 3 and 4 further require particular sizes of nut particles. However, as above, it is known that oil separation can be partially prevented by coarse grinding, it would have been obvious to grind to particular degrees, which also allow for a minimum of oil exudation. Therefore, it would have been obvious to grind to levels, which still kept the oil from exuding since such is the aim of the coarse grinding.

Certainly a temperature of from 145 to 165 as in step 6 can be reached in any normal cooling step. It is not clear from the reference to Edson just what temperature is generated during the grinding step. Nothing is seen that it would not have been as

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claimed. Therefore, it would have been obvious to cool to temperatures below the grinding temperature.

Claim 7 further requires putting the peanut paste into an agitating, mixing bank. However, no weight is given to the type of apparatus in a process claim. Certainly, agitators such as mixers are well known. The reference discloses adding ingredients such as to the mixture (col. 2, lines 40-48). Therefore, it would have been obvious to add sugar or salt to the peanut mixture and agitate by known mechanical means.

Claim 8 further requires adding dried fruits into the peanut mixture. Edson discloses using peanut paste with sweetmeats, which are known to be candied fruits. Therefore, it would have been obvious to add fruit to the peanut paste and to use dried fruits for convenience.

Nothing new is seen in adding extracts to the peanut mixture as in claim 9 and 10. Attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in the fact situation of the instant case, and wherein the Court stated on page 234 as follows:

This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected

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ingredients which produces a new, unexpected, and useful function. In re Benjamin D. White, 17 C.C.P.A (Patents) 956, 39 F.2d 974, 5 USPQ 267; In re Mason et al., 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221. Therefore, it would have been obvious to add additional ingredients to the composition.

Additional limitations such as mixing and blending for a particular length of time as in claim 11, using particular low temperatures as in claim 12 and pumping the mixture are seen as obvious given the technology of the times.

The limitations of claims 14 –18 have been disclosed above and are obvious for those reasons.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the above references as applied to the above claims, and further in view of Bolton (1,687,154).

Claim 5 further requires that other ingredients be added to the peanut paste. This is so well known, that a reference is hardly required. Honey and jelly are well known ingredients, which are added to peanut paste as are sugar and salt. Also, Bolton discloses that it is known to add cucumbers to peanut butter (col. 1, lines 12-50). Therefore, it would have been obvious to add known ingredients to the peanut paste in the process of the combined references.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 2-6-07

  
HELEN PRATT  
PRIMARY EXAMINER